SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD R. COOCH
RESIDENT JUDGE

NEW CASTLE COUNTY COURTHOUSE
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Re: Rosa Perez-Melchor et al. v. Dr. Mehdi Balakhani, Llyn Balakhani, and Mehdi C. Balakhani
C.A. No. 04C-05-269 RRC

Submitted: August 29, 2006
Decided: October 26, 2006
Corrected: January 17, 2007

On Defendants Dr. Mehdi Balakhani and Llyn Balakhani's Motion for Summary Judgment.
DENIED.

On Defendants Dr. Mehdi Balakhani and Llyn Balakhani's Motion for Partial Summary Judgment as to Plaintiff Perez-Melchor's Punitive Damages Claim.
GRANTED.

Dear Counsel:

Before this Court is a Motion for Summary Judgment filed by Defendants Dr. Mehdi Balakhani and Llyn Balakhani ("Moving Defendants"). The issue raised is whether Moving Defendants, who gave a check to their adult son, Mehdi C. Balakhani ("Mehdi"), to purchase his uncle's car, and aware to some extent that he had a history of poor driving and drug use, can potentially be held liable for negligent entrustment after Mehdi, while driving that car under the influence of alcohol about four weeks later, caused an accident that killed one person and injured another. For the reasons set forth below, this Court finds that there are material facts in dispute and also that, as a matter of law, Moving Defendants potentially can be held so liable. Therefore, Moving Defendants' Motion for Summary Judgment is **DENIED**.

Additionally, the Moving Defendants have filed a Motion for Partial Summary Judgment as to Plaintiff Perez-Melchor's punitive damages claim. The issue raised is whether Perez-Melchor can potentially recover punitive damages from Moving Defendants if she is successful on her claim against them, where her claim contains no allegation that the decedent, the former husband of Perez-Melchor, sustained conscious pain and suffering as a result of the accident. Because Perez-Melchor's complaint against the Moving Defendants is brought under Delaware's wrongful death statute, 10 *Del. C.* § 3724, punitive damages are not available, and accordingly Moving Defendants' Motion for Partial Summary Judgment as to Perez-Melchor's punitive damages claim is **GRANTED**.

I. FACTS AND PROCEDURAL HISTORY

The Court will set forth only those facts necessary to this decision. This case arises from a two car automobile collision that occurred on August 21, 2003. The crash resulted in the death of one of the drivers, Jose Alfredo Tovar-Costillo, and injuries to his passenger, Plaintiff Martha Martinez. Mehdi, the driver of the other car, was intoxicated at the time of the accident, with a blood alcohol content greater than the legal limit of 0.10. He was eventually convicted of Vehicular Homicide 2nd Degree (11 *Del. C.* § 630).

Prior to that accident, Mehdi had a history of poor driving. On May 9, 2000, Moving Defendants received a letter from their automobile insurance company, Montgomery Mutual Insurance Company, that Mehdi had

accumulated ten points on his driver's license.[1] As a result of that point accumulation, Montgomery Mutual informed Moving Defendants that they would have to remove Mehdi from their insurance policy. The letter further indicated that any car Mehdi drove would have to be titled in his name only and insured in his name.[2]

Moving Defendants testified that they were not aware of any of Mehdi's specific traffic violations.[3] Specifically, Mr. Balakhani testified that he did not know what Mehdi was charged with; he "just knew the points."[4] In addition, Mrs. Balakhani stated in her deposition that she thought Mehdi was a "good driver" and that she "never saw any negative report about him and his driving."[5]

Prior to the August 21, 2003 accident, Mehdi's driver's license was never revoked or suspended due to his driving record.[6] Moreover, he had never been involved in any car accidents that resulted in personal injury, nor had he ever been charged with driving under the influence.[7] Dr. Balakhani testified that he was "very sure" that Mehdi drank alcohol, though "he wasn't drinking to the point where I felt like that—we felt that he was drinking and he came to the house and he had alcohol on his breath."[8]

Upon receiving the letter from Montgomery Mutual, Moving Defendants acknowledged being concerned about Mehdi's driving and testified that they had several conversations with him about his need to drive more carefully.[9] They also attended defensive driving classes with Mehdi and their daughter.[10] Mehdi completed his third defensive driving course on June 30, 2003.[11]

In addition to his poor driving record, Mehdi also had a prior drug charge. On February 20, 2001, Mehdi was arrested for possession of ketamine and related drug paraphernalia and subsequently sentenced on

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[1] Llyn Balakhani Dep. 77; Dr. Mehdi Balakhani Dep. 33; May 9, 2000 Letter from Montgomery Mutual, at Ex. I of Moving Def.'s Mot. for Summ. J.

[2] *Id*.

[3] Llyn Balakhani Dep. 63-69, at Ex. D of Moving Dr. Mehdi Balakhani Dep.; Dr. Mehdi Balakhani Dep. 23-25, at Ex. H of Moving Def.'s Mot. for Summ. J.

[4] Dr. Mehdi Balakhani Dep. 24.

[5] Llyn Balakhani Dep. 69-70.

[6] Mehdi C. Balakhani aff., at Ex. G of Moving Def.'s Mo. For Summ. J.

[7] *Id*.

[8] Dr. Mehdi Balakhani Dep. 62.

[9] Dr. Mehdi Balakhani Dep. 35.

[10] Llyn Balakhani Dep. 61.

[11] Mehdi C. Balakhani's Driving Record, at Ex. F of Moving Def.'s Mot. for Summ. J.

April 23, 2001. Moving Defendants testified that they were aware of this incident.[12] When asked at her deposition if she thought Mehdi had a substance abuse problem after this event, Mrs. Balakhani responded, "I mean, I knew he had a major problem there, yeah. I mean that's—that's a major problem."[13]

As part of his sentence on the drug charges, he participated in the Crest Substance Abuse Treatment Program and resided at the Plummer Community Corrections Center for approximately three months.[14] Also as a result of his conviction, Mehdi's driver's license was revoked for two years.[15] After leaving the Plummer Community Corrections Center, he then returned to live at home with Moving Defendants.[16]

On April 20, 2003, Mehdi was involved in a hit and run accident which resulted in charges of inattentive driving and failure to report an accident. At the time, he was living at Moving Defendants' house and told them that he had fallen asleep at the wheel and had struck a parked car.[17]

A few months later, on or about July 18, 2003, Moving Defendants gave what they described in their depositions as a "loan" of $6,700 to Mehdi so that he could purchase his uncle's 1996 Cadillac.[18] Shortly thereafter, Moving Defendants also paid to have this car serviced.[19] Moving Defendants testified that Mehdi began making biweekly payments on the "loan" on January 30, 2004.[20] Mehdi already owned a 1987 Oldsmobile that he had purchased in May 2003 with money from a custodial account.[21] However, Mehdi was driving the 1996 Cadillac when he caused the August 21, 2003 accident.

Plaintiffs originally filed this action solely against Mehdi. Later, Plaintiffs amended the complaint to add a claim against Mehdi's parents, Moving Defendants, alleging negligent entrustment. Moving Defendants promptly then filed a motion to dismiss in April 2004, asserting that they could not be "suppliers" or "entrusters" of the automobile involved in the

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[12] Llyn Balakhani Dep. 33-36; Dr. Mehdi Balakhani Dep. 10-11.

[13] Llyn Balakhani Dep. 37.

[14] Llyn Balakhani Dep. 39-41; Dr. Mehdi Balakhani Dep. 12-13.

[15] 21 *Del. C.* § 4177K.

[16] Dr. Mehdi Balakhani Dep. 13-14.

[17] Dr. Mehdi Balakhani Dep. 20-21. The record is unclear as to the disposition of these charges.

[18] Llyn Balakhani Dep. 102-103. Plaintiffs do not concede the fact that the transaction was in fact a loan.

[19] Llyn Balakhani Dep. 128-129.

[20] Llyn Balakhani Dep. 115; Dr. Mehdi Balakhani Dep. 42.

[21] Llyn Balakhani Dep. 104-105.

fatal accident as a matter of law because they did not have "control" of the automobile at the time of that accident. This Court denied that motion, holding on September 21, 2005 that "it was unnecessary, as a matter of law, for moving defendants to have had 'control' of the automobile at the time of the accident," but rather that the focus of the negligent entrustment claim should be "foreseeability" and not "ownership" or "control."[22] Moving Defendants then filed an application for certification of interlocutory appeal, which this Court denied on October 17, 2005.[23] Moving Defendants did not appeal that decision. Moving Defendants' present motions were filed after the conclusion of discovery.

II. THE PARTIES' CONTENTIONS

In support of their motion for summary judgment, Moving Defendants contend (as they contended in their motion to dismiss) that they cannot be liable for negligent entrustment as a matter of law because they had no "control" over the vehicle at the time of the accident. They also argue that "there is no material fact at issue as to whether [Moving Defendants] knew or should have known that their son was likely to use the 1996 Cadillac in a manner involving an unreasonable risk of harm to others." Additionally, Moving Defendants claim that there was no causal connection between their loan to Mehdi and the subsequent motor vehicle accident because he owned another vehicle in addition to the 1996 Cadillac at the time of the accident. Moving Defendants rely on a completed discovery record that did not exist at the time of this Court's decision on their earlier motion to dismiss.

Separately, Moving Defendants contend that Plaintiff Perez-Melchor cannot recover punitive damages from Moving Defendants. Count III of the complaint, the only count directed at Moving Defendants, contains no allegation that the decedent sustained conscious pain and suffering as a result of the accident. Therefore, Moving Defendants assert that Plaintiff's claims against them were brought under Delaware's wrongful death statute, which does not allow recovery of punitive damages.

In response, Plaintiffs contend that this Court has already ruled that parents could "supply" or "entrust" without the element of "control," and that a test of "foreseeability" should apply. Therefore, they assert that the "doctrines of collateral and judicial estoppel" should apply. Plaintiffs argue, on the expanded factual record now developed, that because Moving

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[22] *Id*. at *5.

[23] *Perez-Melchor v. Balakhani*, 2005 WL 2659463 (Del. Super.).

Defendants were concededly aware of Mehdi's poor driving record and of his prior drug charges, the August 21, 2003 collision was a foreseeable result of providing Mehdi with the money to buy his uncle's 1996 Cadillac. Plaintiffs additionally contend that causation issues should be left to the jury to decide. Plaintiffs assert that "fact sensitive inquiries [preclude] the applicability of summary judgment." Finally, Plaintiffs claim that punitive damages should be allowed under Delaware's wrongful death statute as a matter of public policy, despite case precedent to the contrary.

III. STANDARD OF REVIEW

Summary judgment is only appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."[24] Although the moving party has the burden of demonstrating that no material issues of fact are in dispute and it is entitled to judgment as a matter of law, the facts must be viewed "in the light most favorable to the nonmoving party."[25]

IV. DISCUSSION

The general standard for negligent entrustment is:

> One who supplies directly or through a third person a chattel for the use of another whom the supplier knows or has reason to know to be likely because of his youth, inexperience, or otherwise, to use it in a manner involving unreasonable risk of physical harm to himself and other whom the supplier should expect to share in or be endangered by its use, is subject to liability for physical harm resulting to them.[26]

More specifically, this Court has held that the "elements of negligent entrustment are '(1) entrustment of the automobile, (2) to a reckless or incompetent driver whom, (3) the entrustor has reason to know is reckless or incompetent, and (4) resulting damages.'"[27] Furthermore, this Court, in its

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[24] Super. Ct. Civ. R. 56(c).

[25] *Mason v. United Servs. Auto. Ass'n*, 697 A.2d 388, 392 (Del. 1997).

[26] Restatement (Second) of Torts § 390 (1965).

[27] *Harris v. Harris*, 1997 WL 366855, at *1 (Del. Super.) (quoting *Fisher v. Novak*, 1990 WL 82153 (Del. Super.)).

September 21, 2005 opinion, held that "the key element in the tort of negligent entrustment . . . is the foreseeability of the harm, and not ownership of the chattel or control of the tortfeasor.'"[28]

A. Moving Defendants Can Potentially Be Liable for Negligent Entrustment Even if They Did Not Have "Control" Over the Car.

Moving Defendants' motion argues that they cannot be a "supplier" or "entrustor" for purposes of negligent entrustment because they did not have the requisite control over the automobile. In the context of Moving Defendants motion to dismiss, this Court previously ruled against Moving Defendants on this issue in its September 21, 2005 opinion. As stated in that opinion, "This Court finds, under the facts of this case, that it was unnecessary, as a matter or law, for moving defendants to have had 'control' of the automobile at the time of the accident."[29] Even though Moving Defendants now raise this issue in the context of a summary judgment motion, requiring a different standard of review, the Court continues to adhere to its legal analysis set forth in that opinion.

B. There are Genuine Issues of Material Fact as to Whether the August 21, 2003 Accident was Foreseeable.

Previously, in deciding Moving Defendant's motion to dismiss, this Court held that a "jury should determine, among other things, whether the furnishing of funds by Moving Defendants to Mehdi to purchase an automobile could have foreseeably led to the harm that befell the Plaintiffs under all the relevant facts of this case."[30] In this motion, and now on a developed factual record, Moving Defendants contend that as a matter of law Mehdi's use of the 1996 Cadillac that resulted in the collision was unforeseeable. Specifically, they rely on the facts that prior to that accident, Mehdi had never been in a car accident that involved personal injury and he had never been charged with driving under the influence. Moving Defendants also claim that they had never seen Mehdi "drunk." Further, they note that his driver's license had never been suspended due to his driving record. In fact, Mrs. Balakhani testified that she thought Mehdi was

[28] *Perez-Melchor*, 2005 WL 2338665, at *5.
[29] *Perez-Melchor*, 2005 WL 2338665, at *1.
[30] *Perez-Melchor*, 2005 WL 2338665, at *5.

a "good driver." Therefore, they conclude that there is no material issue as to whether Moving Defendants knew or should have known that by providing Mehdi with the money to buy the car, they were creating an unreasonable risk of harm to others.

In response, Plaintiffs allege that a jury could well find that Mehdi's conduct was foreseeable to Moving Defendants. In particular, Plaintiffs cite to the facts that Moving Defendants were aware that Mehdi had accumulated so many points on his driver's license that he had to be excluded from their insurance policy and that they had conversations with him about the need to drive more carefully. Furthermore, despite these conversations, they knew that Mehdi was involved in a car accident in April 2003. Moving Defendants were also aware that Mehdi had been charged with possession of ketamine and as a result had his driver's license revoked for two years. In addition, Dr. Balakhani testified that he was "very sure" Mehdi drank alcohol prior to August 21, 2003. These facts, Plaintiffs argue, show that Moving Defendants should have been aware of the risks associated with Mehdi's driving.

Again, while the Court's previous decision was decided under a different standard, the Court's view of the applicable law remains the same. When the above facts are viewed in a light most favorable to the Plaintiffs, they amount to sufficient evidence from which a reasonable jury could potentially find that the August 21, 2003 accident was a foreseeable result of Moving Defendants furnishing Mehdi with the necessary funds to buy his uncle's Cadillac.[31] Therefore, the question of foreseeability in this case is a question of fact that should be decided by a jury.

C. A Jury Should Decide Whether the August 21, 2003 Accident Would Have Occurred But For Moving Defendants Financing the Purchase of the Cadillac.

Moving Defendants also claim that their financing of the 1996 Cadillac was not the cause in fact of the collision because Mehdi owned

[31] *See Sanchez-Caza v. Estate of Susan Gordon Lloyd Whetstone*, 2005 WL 1953179 (denying a defendant's motion for summary judgment in a wrongful death case because "[i]t should be left to the jury to decide" whether the defendant's entrustment of his car to his daughter was negligent based on his knowledge of her drug problems). *See also Bennett v. Foulk*, 1979 WL 185849, at *2 (Del. Super.) (finding that the plaintiff who alleged that the defendant negligently entrusted a car to his son had presented sufficient evidence to withstand a motion for summary judgment on the issue of foreseeability).

another car at that time. They suggest that Mehdi could have been driving his other car, or, alternatively, that he could have purchased the 1996 Cadillac himself. In response, Plaintiffs argue that regardless what could have happened, Mehdi was driving the 1996 Cadillac that was purchased with the funds provided by Moving Defendants at the time of the accident. Furthermore, Plaintiffs contend that there is evidence that Mehdi did not have the financial means to purchase that Cadillac on his own.

Issues of causation in fact are, except in rare circumstances, questions for the jury.[32] Accordingly, summary judgment should be granted only when there are no conflicts in the factual contentions of the parties and the only reasonable inferences to be drawn from those contentions are adverse to the plaintiff.[33] There is a genuine dispute in this case as to whether but for Moving Defendant's financing of the 1996 Cadillac the August 21, 2003 accident would not have occurred. Hypothetically, Mehdi could have been driving another car; however, he was in fact driving the car that he had purchased with the funds from Moving Defendants.[34] Moreover, there is evidence that Mehdi was financially dependent, at least to some extent, on Moving Defendants at the time of the accident. Because genuine issues of material fact exist, summary judgment is not appropriate on this issue.

D. Punitive Damages are Not Recoverable Under the Wrongful Death Statute.

Moving Defendants also request partial summary judgment on the issue of whether Plaintiff Perez-Melchor can recover punitive damages from them when her claims against them contain no allegations that the decedent sustained conscious pain and suffering. Under Delaware's survival statute,[35] a plaintiff must prove by the preponderance of the evidence that there was an

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[32] *Ebersole v. Lowengrub*, 180 A.2d 467, 469 (Del. 1962). *See also* Prosser and Keeton on Torts § 41, at 264 (5th ed. 1984) ("It is a matter upon which lay opinion is quite as competent as that of the most experienced court.").

[33] *Watson v. Shellhorn & Hill, Inc.*, 221 A.2d 506 (Del. 1966) (denying summary judgment because "there may be disagreement among reasonable men on these circumstances . . . as to whether or not, assuming [the driver] was guilty of some negligence, that that negligence was a proximate cause of the accident which took place").

[34] Prosser and Keeton, *supra* note 32, at 265 (stating it is the factfinder's job to "compare what did occur with what would have occurred if hypothetical, contrary-to-fact conditions had existed").

[35] 10 *Del. C.* § 3701, *et. seq*.

"appreciable interval of conscious pain and suffering after the injury."[36] Without such an allegation of pain and suffering, Perez-Melchor's recovery against Moving Defendants is restricted to the allowable damages under the wrongful death statute.[37]

Delaware's wrongful death statute, 10 *Del. C.* § 3724, does not permit recovery of punitive damages.[38] This Court has previously granted a motion for partial summary judgment where a plaintiff's claim sought punitive damages under the wrongful death statute.[39] Plaintiff does not contest the existence of this case precedent, but instead argues that as a matter of public policy punitive damages should be recoverable in wrongful death cases. However, as previously stated by another court, "[t]o the extent that the plaintiffs perceive an injustice by the unavailability of punitive damages under the wrongful death statute, their arguments should be made to the Delaware General Assembly and not to courts which are bound to uphold the clear dictates of the legislature."[40] Therefore, because Plaintiff Perez-Melchor's claim against Moving Defendants is brought under the wrongful death statute, she cannot recover punitive damages from Moving Defendants.[41]

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[36] *Magee v. Rose*, 405 A.2d 143, 146 (Del. Super. Ct. 1979).

[37] *Id*. at 147 ("Since there is no basis for an award in this case of compensatory damages for conscious pain and suffering, there can be no award of punitive damages.").

[38] *Ciarlo v. St. Francis Hosp.*, 1994 WL 713864, at *3 (Del. Super.) (citing *Sterner v. Wesley College, Inc.,* 747 F. Supp. 263 (D. Del. 1990) ("Delaware's wrongful death statute, found in 10 *Del. C.* § 3724, does not provide for the recovery of punitive damages.").

[39] *Id*.

[40] *Sterner*, 747 F. Supp. at 269.

[41] Therefore, Moving Defendants' pending motion in limine, filed on October 5, 2006, "to preclude evidence, argument or legal instruction on punitive damages" on the different grounds that Plaintiffs' complaint contains no allegations of reckless conduct on the part of Moving Defendants is denied as moot in light of this decision.

V. CONCLUSION

For the above reasons, Moving Defendants' Motion for Summary Judgment is **DENIED** and Moving Defendants' Motion for Partial Summary Judgment as to Plaintiff Perez-Melchor's Punitive Damages Claim is **GRANTED**.

IT IS SO ORDERED.

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oc: Prothonotary